

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA)

v.)

CARL EVAN SWAIN,)

Defendant.)

CASE NO. CR414-005
U. S. DISTRICT COURT
Southern District of Ga.
Filed in Office

3/18/2015
Deputy Clerk

O R D E R

Before the Court is Defendant's Motion to Dismiss Multiplicious Counts. (Doc. 280.) In this motion, Defendant argues that counts one and two of the second superseding indictment-conspiracy to commit murder for hire and conspiracy to commit murder, respectively-are multiplicious and should be charged as only one conspiracy. For the following reasons, Defendant's motion is **DENIED**.

An indictment contains multiplicious counts where a single offense is charged in more than one count. United States v. Sirang, 70 F.3d 588, 595 (11th Cir. 1995) (quoting United States v. Howard, 918 F.2d 1529, 1532 (11th Cir. 1990)). Generally, two counts are not multiplicious where " 'each provision requires proof of an additional fact which the other does not.' " United States v. Anderson, 872 F.2d 1508, 1520 (11th Cir. 1989) (quoting Ward v. United States, 694 F.2d 654, 661 (11th Cir. 1982)). Additionally, counts are not multiplicious where they

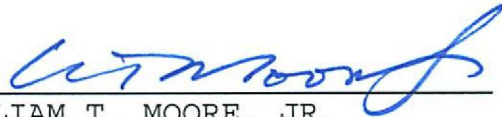
are based on separate statutory provisions prohibiting specific types of conspiracies rather than being grounded in only the general conspiracy statute. Id.

In this case, counts one and two of the second superseding indictment each require the Government to prove slightly different facts. Conspiracy to commit murder for hire requires that the Government prove Defendant conspired (1) to use or cause another to use any facility of interstate or foreign commerce; (2) the intention that murder be committed; and (3) the existence of a promise or agreement to pay anything of pecuniary value as consideration for committing the murder. Conspiracy to commit murder only requires the Government to prove Defendant conspired to cause the death of the victim with (1) malice aforethought and (2) premeditated intent. Comparing these two counts, it is clear that conspiracy to commit murder for hire requires proof of elements in addition to those required for conspiracy to commit murder.

Unsurprisingly, these two counts are charged under separate conspiracy statutes. Conspiracy to commit murder for hire is charged under a general conspiracy statute, 18 U.S.C. § 371, which prohibits two or more individuals from conspiring to commit any offense against the United States. Conspiracy to commit murder, however, is charged under a specific conspiracy statute, 18 U.S.C. § 1117, which expressly prohibits two or more

individuals from conspiring to commit murder. Given the separate code sections underlying counts one and two of the second superseding indictment, these counts are not multiplicitious. Accordingly, Defendant's motion must be denied.

SO ORDERED this 18th day of March 2015.

A handwritten signature in blue ink, appearing to read "W. T. Moore, Jr.", is written over a horizontal line.

WILLIAM T. MOORE, JR.
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA